

FILED

DEC - 3 2020

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SUPPRESSED

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCUS E. GARDNER,

Defendant.

No.

4:20CR00747 HEA/NAB

INDICTMENT

COUNT I

The Grand Jury charges that:

At all times pertinent to the charges in this indictment:

1. Federal law defines the term

(a) "minor" to mean any person under the age of eighteen years (18 U.S.C. § 2256(1));

(b) "sexually explicit conduct" to mean actual or simulated--

(i) sexual intercourse, including genital-genital, anal-genital, oral-genital, oral-anal, whether between persons of the same or opposite sex,

(ii) bestiality,

(iii) masturbation,

(iv) sadistic or masochistic abuse, or

(v) lascivious exhibition of the genitals, anus or pubic area of any person (18 U.S.C §2256(2)(A)); and

(c) "computer" to mean an electronic, magnetic, optical, electrochemical or other high speed data processing device performing logical, arithmetic or storage functions, including any data storage facility or communications facility directly related to or operating in conjunction with such device. (18 U.S.C. §2256(6));

(d) "child pornography" to mean any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where-

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct. (18 U.S.C. §2256(8)).

2. On or between about September 18, 2015 and August 27, 2019, in St. Charles County, Missouri, in the Eastern District of Missouri and elsewhere,

MARCUS E. GARDNER,

the defendant herein, did knowingly receive image files and video files of child pornography using any means and facility of interstate and foreign commerce, to wit the defendant knowingly received image files and video files of child pornography via the internet, to include but not limited to the following:

- a. File Name: Asians 2015-02.jpg – is an image file of a fully-nude, prepubescent female child that appears to be kneeling on a bed and performing oral sex on a fully-nude, prepubescent

male child that is standing on the bed. A date and time stamp that reads "05/13/2013 06:58" can be seen near the bottom of the photo;

- b. File Name: 7Yo Amber – Oral And Anal With Dad.wmv – is a video file with a runtime of 12:14 (mm:ss). This video appears to be a series of multiple video clips spliced together that shows the same young, prepubescent female child performing various sex acts with an adult male. The adult male's face is never shown, and only his penis and hands are ever fully shown. The child performs oral sex multiple times on the male, is shown masturbating, and inserting a dildo into her anus. Towards the end of the video, the adult male anally penetrates the child with his finger then attempts anal penetration with his penis; and
- c. File Name: 180-2.avi – is a video file with a runtime of 02:06 (mm:ss). This video shows a fully-nude, prepubescent female child lying on a bed with a blindfold over her eyes. The child is bound by the wrists over her head with her legs also bound and spread open. A dark tan colored dog can be seen licking the genitals and pelvic area of the child. What appears to be an adult male rubs a food substance on the child's genitals and then inserts his penis into the child's mouth;

in violation of 18 U.S.C. § 2252A(a)(2).

FORFEITURE ALLEGATION

The Grand Jury further finds by probable cause that:

1. Pursuant to Title 18, United States Code, Section 2253, upon conviction of an offense in violation of Title 18, United States Code, Section 2252A(a)(2) as set forth in Count 1 of the Indictment, the defendant shall forfeit to the United States of America: any visual depiction as described in Sections 2251, 2251A, 2252, 2252A or 2260 of Title 18, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Chapter 110 of Title 18; any property, real or personal, constituting or traceable to gross profits or other proceeds obtained

from such offense; and any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property.

2. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America will be entitled to the forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

A TRUE BILL.

FOREPERSON

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